

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail Contract 77 (MC2014-18)
Negotiated Service Agreement

Docket No. CP2014-31

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued April 29, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Change in Terms Pursuant to Amendment to Priority Mail Contract 77, April 15, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2010, the Commission approved the Priority Mail Contract 77 negotiated service agreement (Existing Agreement).² On April 15, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On April 18, 2016, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not materially affect cost coverage and that the supporting financial documentation and certification originally filed in this docket remain applicable. *Id.*

On April 21, 2016, the Public Representative filed a motion requesting the issuance of an information request to the Postal Service requesting a “financial analysis showing how the newly amended volumes and rates will impact cost coverage.”⁴ The Motion is granted; on April 22, 2016, Chairman’s Information Request No. 1 was issued.⁵ Concurrently, to provide interested persons an opportunity to consider the Postal Service’s responses to CHIR No. 1, the Commission extended the comment

² See Docket Nos. MC2014-18 and CP2014-31, Order Adding Priority Mail Contract 77 to Competitive Product List, March 7, 2014 (Order No. 2010). The contract was later amended twice. See Order No. 2456, Order Approving Amendment to Priority Mail Negotiated Service Agreement, April 23, 2015, at 3 (modifying the volume-related tier structure used to calculate prices and changing the methodology for the annual adjustment); Order No. 3148, Order Approving Amendment to Priority Mail Negotiated Service Agreement, March 11, 2016, at 3 (modifying contract provisions governing prices and price adjustments as well as extending contract duration to six years).

³ Order No. 3248, Notice and Order Concerning Amendment to a Priority Mail Negotiated Service Agreement, April 18, 2016.

⁴ Public Representative Motion to Request Issuance of Information Request, April 21, 2016, at 1 (Motion).

⁵ Chairman’s Information Request No. 1, April 22, 2016 (CHIR No. 1).

deadline to two days after the Postal Service filed a complete response to CHIR No. 1.⁶ On April 26, 2016, the Postal Service provided the requested information under seal.⁷

II. COMMENTS

Comments were filed by the Public Representative.⁸ No other person submitted comments. The Public Representative reviewed the Amendment, documentation related to the Existing Agreement, and the Response to CHIR No. 1. PR Comments at 2. Based on that review, he concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice; the Amendment filed under seal; the Existing Agreement; the financial models filed under seal in this docket with the Existing Agreement, both previous amendments, and in the Response to CHIR No. 1; and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of

⁶ Order No. 3256, Order Extending Comment Deadline, April 22, 2016.

⁷ Response of United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, April 26, 2016 (Response to CHIR No. 1).

⁸ Public Representative Comments on Change in Terms Pursuant to Amendment to Priority Mail Contract 77, April 27, 2016 (PR Comments).

institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment modifies the rates that the contract partner will pay. Based on a review of the record and the financial models filed under seal in this docket with the Existing Agreement, both previous amendments, and the proposed amendment, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section III.C. of the amended agreement should allow the amended agreement's revenues to cover costs for the duration of its term.⁹ The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire six years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.¹⁰

⁹ See Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 77, March 1, 2016, Attachment A at 2 (Second Amendment Notice).

¹⁰ Second Amendment Notice, Attachment A at 2. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

The Existing Agreement, as amended also contains a provision that allows the parties to extend the Existing Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the Existing Agreement expiring.¹¹ During the extension periods, prices will increase by the lesser of: (1) the most recent average increase in prices of general applicability or (2) a negotiated amount, as described in the Existing Agreement, as amended. See Second Amendment Notice, Attachment A at 1. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically increase in the extension period, making it likely that the Existing Agreement, as amended, will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

¹¹ *Id.* As the Commission noted in Order No. 1773, the Postal Service clarified that substantially similar language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within at least seven (7) calendar days of the Contract's expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; *see also* Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 77 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Ruth Ann Abrams
Acting Secretary